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Via Facsimile and First Class Mail

May 17, 2004

Elaine Devine, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL
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Re: **MUR 5440—Moving America Forward, Inc., Respondent**

Dear Ms. Devine:

This will respond, on behalf of respondent Moving America Forward, Inc. ("MAF"), to the Complaint filed by the Republican National Committee et al., in the above-referenced MUR.

In summary, MAF is a New Mexico political committee that undertakes voter registration, training, making contributions to state and local candidates in New Mexico and defraying certain activities of New Mexico Governor Bill Richardson which are partisan in nature but not appropriately covered by his authorized re-election committee. It has never undertaken any "public communication" referencing a federal candidate or political party (except insofar as advertisements exclusively for state and local candidates have identified their party), nor are MAF's voter registration activities coordinated with any party committee or federal candidate. The Complaint does not even allege any facts to the contrary. For that reason, it is clear that MAF is not a federal political committee and that none of its activities have been coordinated with any party committee or federal candidate within the meaning of the Commission's rules. Accordingly, the Commission should find no reason to believe that MAF has violated the Federal Election Campaign Act of 1971 as amended (the "Act") or the Commission's regulations, and should dismiss the Complaint and close the file as to respondent MAF.

FACTUAL BACKGROUND

As explained in the attached Declaration of Amanda Cooper, the executive director of MAF ("Cooper Dec."), MAF is a New Mexico political committee registered with the New Mexico Secretary of State under New Mexico Law. (Cooper Dec. ¶ 2).

See also, Listing of All Active, Currently Registered Political Action and Party Committees on New Mexico Secretary of State website, www.sos.state.nm.us/Sospacs.htm. The purposes of MAF are, and its activities consist of: (1) voter registration focused on the Latino/Hispanic and Native American communities; (2) training of Latino/Hispanic activists; (3) making contributions to state and local candidates in New Mexico; and (4) defraying the costs of partisan activity by Governor Bill Richardson that is not, under New Mexico law, appropriately paid for by his re-election committee (Cooper Dec. ¶3)—for example, travel to meetings of the Democratic Governors Association, of which Governor Richardson is an officer.

MAF has never paid for any “public communication,” within the meaning of the commission’s regulations, even referencing a federal candidate, or referencing a political party (except for advertisements specifically and expressly advocating the election only of state and local candidates, and referring to their party affiliation).. (Cooper Dec. ¶4). Nor has MAF ever coordinated its voter registration activities with any political party or candidate for federal office.

ARGUMENT

I. MAF IS NOT A FEDERAL POLITICAL COMMITTEE

The Complaint does not allege, anywhere, that MAF is a federal political committee, but vaguely identifies MAF as part of some “illegal soft money conspiracy.” (Complaint at 21, 25). It is clear beyond question, in any event, that MAF cannot be considered a federal “political committee” within the meaning of the Act.

The Act defines the term “political committee” to mean any association or other group of persons “which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year....” 2 U.S.C. § 431(4)(A). The term “expenditure” is defined to mean a payment “for the purpose of influencing any election for Federal office;...” *Id.* §431(9)(A)(1).

Prior to the enactment of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), it was clear that an association is not a “political committee” unless (i) its major purpose is the election or defeat of federal candidates and (ii) it made “expenditures” of at least \$1,000 in a calendar year. See FEC Notice of Proposed Rulemaking, 69 *Fed. Reg.* 11736 (March 11, 2004). While the Commission has not yet promulgated any new regulations addressing the definition of “political committee,” it has recognized that :

general expressions of support for candidates of a party do not, absent direct contributions to federal candidates or the presence of “express advocacy”...qualify as “expenditures” under the Act.

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Pre-MUR 395, College Republican National Committee, Statement of Reasons of Chairman Mason and commissioners Wold and Smith at 4.

Contrary to the argument set out in the Complaint, at pp. 7-10, nothing in BCRA changed the definition of “expenditure.” For more than 25 years, it has been the law that this definition of “expenditure” is confined to communications that “in express terms advocate the election or defeat of a clearly identified federal candidate.” *Buckley v. Valeo*, 424 U.S. 1, 42-44 (1976).

Nothing in BCRA changes that test. To the contrary, the U.S. Supreme Court, in its recent decision upholding most of BCRA, *McConnell v. Federal Election Commission*, 540 U.S. ___, 124 S. Ct. 619, 687-88 (2003), explicitly affirmed the *Buckley* test. The *McConnell* Court further characterized its earlier opinion in *Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 248 (1986) as reaffirming this construction of “expenditure”. The *McConnell* Court indeed confirmed that, “Since our decision in *Buckley*, Congress’ power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates has been firmly embedded in our law.” 124 S.Ct. at 694.

Clearly, MAF has never paid for any public communication that expressly advocates the election or defeat of a federal candidate. But even if, as the Complaint urges, at p. 9, the test is changed to “promote, oppose, attack or support” a federal candidate, MAF would not meet the test. Although the Complaint alleges that MAF has “run broadcast advertisements in an effort to defeat President Bush,” p. 25, and refers to MAF as a “527 broadcast advertisement group,” the Complaint cites no evidence at all—not even a news clipping—to support that reckless and false charge. In fact, MAF has never run *any* broadcast advertising mentioning a federal candidate in any way. To the contrary, MAF has never paid for any public communication, within the meaning of the Commission’s regulations, that even *references* a federal candidate. (Cooper Dec. ¶ 4).

For these reasons, it is clear that MAF cannot possibly be treated as a federal “political committee.”

**II. THERE HAS BEEN NO IMPERMISSIBLE COORDINATION
BETWEEN MAF AND ANY POLITICAL PARTY OR FEDERAL
CANDIDATE**

Under the Commission’s regulations, an expenditure for a communication is “coordinated” with a party committee or federal candidate in a way that results in an unlawful in-kind contribution to that committee or candidate, if the communication meets a two-part test—a “content” standard and a “conduct” standard. 11 C.F.R. §109. To meet the “content” standard, a communication must, at a minimum, be a “public

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communication” that at least refers to a political party or to a clearly identified candidate for Federal office. *Id.* § 109.21(c). Every one of the four types of content described in subparagraph (c)—i.e., republished campaign materials, express advocacy, electioneering communication and public communication within 120 days—requires at least that much.

As noted, MAF has never paid for *any* “public communication” referencing a federal candidate, or referencing a political party (except insofar as advertisements expressly and specifically advocating the election of state and local candidates have referred to their party affiliation). (Cooper Dec. ¶4). For that reason alone, there is no possible impermissible coordination involving MAF, under the Commission’s rules.

MAF does engage in voter registration which, under the Commission’s rules, “shall not be coordinated with any candidate(s) or political party” and shall not “expressly advocate” the election or defeat of clearly identified federal candidate. 11 C.F.R. § 114.4(c)(2). As noted in the Cooper Declaration, MAF’s voter registration activities have never been coordinated with any candidate or political party. (Cooper Dec. ¶5).¹

The Complaint in this MUR actually allege any facts that would state a claim, under the Commission’s rules, of impermissible coordination involving MAF. Rather, the Complaint states that Governor Richardson is one of a number of individuals, linked to various groups, who “have overlapping roles leading to violations of the coordination rules....” (Complaint, p. 59).

The “overlapping roles” cited by the Complaint in the case of Governor Richardson are that he is “involved” in MAF and is also the “chair of the Democratic National Convention this summer in Boston....” (Complaint p. 60). In fact, Governor Richardson has merely been nominated by the Chairman of the DNC to become Permanent Chair of the Democratic National Convention—a position he will not actually assume until elected to it by the full Convention when it begins on July 26, 2004. *See* Final Call to Democratic National Convention, adopted August 10, 2002, section VIII(C)(2) at p. 13. Thus, Governor Richardson does not even currently occupy one of the “overlapping roles” identified in the Complaint.

Further, contrary to the suggestion in the Complaint, the mere possession of “overlapping roles” of any kind does not, in any event, in and of itself meet the “content” standard of the Commission’s regulations unless there is some communication of the “plans, project, activities or needs” of a candidate or political party committee to the other organization paying for the communication. 11 C.F.R. § 109.21(d)(3), (4) & (5). In this case, the Complaint does not allege that there has been such communication by

¹ The Commission, at its meeting on May 13, 2004, specifically rejected a proposal that would have treated a 527 organization as a federal political committee if it engaged in partisan voter registration.

Governor Richardson to MAF, but only that, in the *future*, “as head of the national convention, he *will* by definition, learn and act on the plans and needs of the Kerry campaign....” (Complaint p. 60(emphasis added)). The Complaint further suggests that “Richardson by definition is using what he learns in his Convention job to shape the messaging of the soft dollar issues ads....Moving America Forward [is] running.” (*Id.* pp. 60-61).

Of course, MAF does not run and has never run any “issue ads” referencing any federal candidate or party committee. Further, Governor Richardson has not yet officially been elected to the job and he has never—never—communicated any information about the plans, projects, activities or needs of the Democratic National Committee or the campaign of Senator Kerry or any other federal candidate, to MAF, which information is relevant to any communication or voter registration activity by MAF. (Cooper Dec. ¶6).

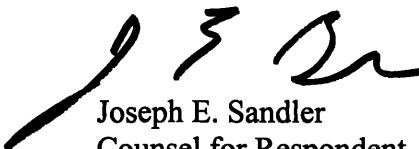
To the extent that the Complaint is suggesting a possible hypothetical future incident of impermissible coordination, it clearly does not provide any basis to trigger any further proceedings by the Commission. The Act recognizes as a valid Complaint only one that alleges that “a violation of this Act...has occurred....” 2 U.S.C. §437g9a(1). The Commission has no authority whatsoever to find “reason to believe” based on a Complaint alleging only a possible future violation. *See* MUR 5338, The Leadership Forum *et al.*, Statement of Reasons of Vice Chairman Smith at pp. 2-3 (“Complaints must allege an actual violation in order to be legally sufficient to trigger an investigation....”)

For these reasons, the Complaint does not set forth any cognizable allegation of impermissible coordination and there has never, in fact, been any such impermissible coordination, involving this respondent.

CONCLUSION

For the reasons set forth above, the Commission should find no reason to believe that MAF has violated the Act or the Commission’s regulations and should dismiss the Complaint and close the file, as to respondent MAF.

Respectfully submitted,



Joseph E. Sandler
Counsel for Respondent
Moving America Forward, Inc.

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BEFORE THE FEDERAL ELECTION COMMISSION

In re:

Complaint of Republican National
Committee, et. al.,

Moving America Forward, Inc.,
Respondent

) Matter Under Review 5440

DECLARATION OF AMANDA COOPER

1. I serve as Executive Director of Moving America Forward, Inc. ("MAF").

I make this Declaration in support of MAF's response to the Complaint filed by the Republican National Committee and Bush/Cheney Campaign, in the above-referenced matter.

2. MAF is a New Mexico corporation and is a New Mexico political committee registered with the Secretary of State of New Mexico pursuant to the New Mexico Campaign Reporting Act, New Mexico Statutes Annotated §§1-19-25 et seq.

3. The purposes of MAF are, and its activities consist of: (1) voter registration focused on the Latino/Hispanic and Native American communities; (2) training of Latino/Hispanic activists; (3) making contributions to state and local candidates in New Mexico; (4) defraying the costs of partisan activity by Governor Bill Richardson that is not, under New Mexico law, appropriately paid for by his re-election committee.

4. I understand that, under the FEC's rules, the term "public communication" includes broadcast, cable or satellite communication, newspaper, magazine, outdoor

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advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. Since its formation, MAF has never made *any* payment whatsoever for any "public communication" that refers to any identified candidate for federal office or to any political party (other than a reference to a political party in an advertisement specifically and expressly advocating the election only of a candidate for state or local office).

5. MAF has never coordinated its voter registration activities with any political party or candidate for federal office.

6. Governor Bill Richardson has never communicated to MAF, its officers, directors, employees or consultants, any information whatsoever about the plans, projects, activities or needs of the Democratic National Committee or any other party committee or candidate for federal office, which information is relevant to any communication or voter registration activity by MAF..

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 17th day of May 2004.



Amanda Cooper